

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JEROME D. JOHNSON,
Plaintiff,

VERSUS CIVIL ACTION NO: 1:07cv539LG-JMR

DONALD A. CABANA, et al.,
Defendants.

DEPOSITION OF JEROME D. JOHNSON

Taken at the Pascagoula Restitution
Center, 1721 Kenneth Avenue, Pascagoula,
Mississippi, on Friday, March 28, 2008,
beginning at 10:00 a.m.

APPEARANCES:

JEROME D. JOHNSON
PLAINTIFF PRO SE

JON S. TINER, ESQUIRE
Dukes, Dukes, Keating & Faneca, P.A.
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ATTORNEY FOR WARDEN DONALD A. CABANA,
EARL LEONARD, CAROLYN PENDERGAST,
STEVE CAMPBELL, GEORGE H. PAYNE, JR.,
KENNETH ROGERS, NATHAN ELLSBERRY AND
ELAINE LEGE, ALL OFFICIALLY AND IN
THEIR INDIVIDUAL CAPACITIES

EXHIBIT

"A"

APPEARANCES: (Continued)

IAN A. BRENDDEL, ESQUIRE
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REPORTED BY:

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1 Q. To New York?

2 A. Niagara Falls.

3 Q. Niagara Falls. Still waiting to come
4 down to the Gulf Coast?

5 A. And then Harrison County picked me up.

6 Q. And Harrison County picked you up?

7 A. Yes, sir.

8 Q. And where did you go directly --

9 A. To Harrison County jail.

10 Q. Harrison County Adult Detention Center?

11 A. Correct.

12 Q. And this was all on charges of your
13 forgery here on the Gulf Coast?

14 A. Yes, sir.

15 Q. Okay. And so they hadn't prosecuted you
16 yet for that claim?

17 A. I was found guilty in 2005.

18 Q. So you were awaiting your trial for
19 forgery at the Harrison County Adult Detention
20 Center?

21 A. During that time in 2004, correct. And
22 I was sentenced 2005, June the 22nd of 2005.

23 Q. And you were sentenced in 2005. And
24 what was your sentence for?

25 A. I was sentenced to ten years running

1 concurrent on Count I, ten years running
2 concurrent on Count II with two years to serve.

3 Q. And was that to serve at the Harrison
4 County Adult Detention Center?

5 A. No, sir. That was to serve in the
6 Department of Corrections.

7 Q. Okay. Anywhere within the Department of
8 Corrections?

9 A. Correct.

10 Q. So when you were convicted and your
11 sentence came down, where did you go after that?

12 A. I was supposed to go to the restitution
13 center, come straight to the restitution center.

14 Q. Here in Pascagoula?

15 A. Correct. But Hurricane Katrina
16 happened. So I stayed at Harrison County Work
17 Center. I stayed there until someone stole a pair
18 of gloves of mine, and I asked to be sent back to
19 ADC. I went back to the ADC around
20 September 2005.

21 Q. So after the hurricane, you requested to
22 go back to the adult detention center?

23 A. While I was at the Harrison County Work
24 Center, correct. I was out helping with the
25 relief and passing out ice and water. Prior to

1 that, I was working the gas pumps. But what
2 happened was while I was out helping with relief
3 of passing out ice and water, I came back.
4 Someone went in my locker and stole my gloves. I
5 was very upset over the fact because my sister had
6 sent me that. I don't have no family here, so it
7 was sent for me at the time from Fort Riley,
8 Kansas. And I didn't want to get into any
9 trouble, because my temper was flared up. I asked
10 to -- you know, I packed my stuff. I asked them
11 to bring me back to the ADC.

12 Q. That's the Harrison County Adult
13 Detention Center?

14 A. Correct. I stayed there for about a
15 week. My misses called back to have them -- to
16 bring me back to the Harrison County Work Center
17 to go back --

18 Q. You said your misses?

19 A. Yes, sir.

20 Q. Who is your misses?

21 A. Kerri, her name is Kerri Barton.

22 Q. And what do you mean by your misses?

23 A. My fiancée.

24 Q. Kerri what?

25 A. Barton.

1 Q. Okay. And so she called on your
2 behalf --

3 A. Correct.

4 Q. -- to be transferred?

5 A. To be transferred back to the work
6 center after I done calmed down.

7 Q. And then what happened after that?

8 A. Well, I was never transferred back there
9 because that one year, within that one year of me
10 supposed to be going to the restitution center was
11 department of correction period. So what happened
12 was I was shipped to Rankin County.

13 I went to Rankin County, went through
14 their orientation. And I went to Parchman, Camp
15 25, and I discharged from Camp 25. They did my
16 itinerary for me that Friday for me to go back
17 home to Canada, which never happened because my
18 sentencing order said I was supposed to do that
19 within that year restitution.

20 So they brought me down here to
21 Pascagoula Restitution Center March the 6th, '06.
22 I came here, and no one knew nothing about me
23 coming here. So I didn't stay at this restitution
24 center because they didn't have no bedding. I
25 spent a night in Pascagoula ADC. And on March the

1 7th, '06, Ms. D, who used to work here -- her name
2 is Diane something. I can't just remember her
3 name. She's over here at the probation and parole
4 office. Her and Simon, the probation officer for
5 Gulfport, came and picked me up, and they took me
6 to Hinds County Restitution Center. I went there
7 to Hinds County Restitution Center on the 8th. I
8 started working for Bomack Electric, and I stayed
9 there until June 22nd of 2006.

10 Q. And then what happened then?

11 A. While I was out for work -- you're not
12 allowed to have digital cameras or anything like
13 that. I wasn't aware of that. But while I was at
14 work, someone brought me a digital camera, dropped
15 it off. I explained that situation to the
16 commander and officer, Ms. Robinson, at the time.
17 I talked to her; however, I was packed. I was
18 sent back to Harrison County jail. I went in
19 front of Harrison County jail.

20 At that time Judge Simpson, he told
21 Mr. Simon to get -- find out what was going on
22 with that situation. After that, I was told I was
23 going to go right back to the restitution center.
24 And while waiting to go back, to return back to
25 the restitution center, September the 1st, I was

1 here.

2 Q. So you file an inmate request sheet?

3 A. Yes, sir.

4 Q. And you say you did that on
5 September 4th?

6 A. Starting September the 4th.

7 Q. And how many did you file?

8 A. Well, that day, I wrote one that day.

9 Q. To whose attention was it?

10 A. That was to Captain -- well, at that
11 time, to Sergeant Lege concerning the contraband
12 while I was in the hole.

13 Q. So it didn't relate to the sexual
14 assault charge?

15 A. I wasn't aware of the sexual assault
16 charge until the 5th.

17 Q. So that was just concerning the
18 contraband?

19 A. Yes, sir.

20 Q. When did you start sending requests
21 regarding the sexual --

22 A. Well, that day, that Tuesday when I came
23 back to the zone, I mean, back to B-D, that
24 Tuesday.

25 Q. Okay. And you sent the first one then?

1 A. I sent more than just one. I sent a
2 couple of them. I probably sent out five of them
3 then.

4 Q. You sent five. And do you know what
5 date you sent those?

6 A. That night.

7 Q. So September 5th --

8 A. Yes, sir.

9 Q. -- five were sent out?

10 A. Yes, sir.

11 Q. To whom?

12 A. The officer that comes by that picks
13 them up, I sent it out to him, but I sent them out
14 to -- who is he? That was -- no, to Ms. Lege, to
15 Sergeant Lege.

16 Q. So you gave -- all five were sent to
17 Sergeant Lege?

18 A. They were addressed to Ms. Lege.

19 Q. And so one of them we know dealt with
20 the contraband?

21 A. Yes, sir.

22 Q. And the other four you're saying dealt
23 with --

24 A. Dealt with the sexual assault.

25 Q. -- the sexual assault? And do you have

1 copies of those?

2 A. No, sir. I just recently just got
3 copies back -- well, not recently, in 2007 just
4 got copies back from the ones that I did send out.

5 Q. Okay. I know in your complaint you said
6 that you filed written requests and grievances to
7 the staff, but the first recorded one that we have
8 is the one of February 21st, 2007.

9 A. That's when they started responding back
10 to grievance and requests. They didn't -- the
11 requests themselves stayed -- I mean, they stayed
12 stacked up. There are plenty of them. They
13 usually had an inmate that handled all the
14 requests. But the grievance, they had -- the lady
15 who handled that was the preacher's wife. She's
16 the one that started responding. That was like
17 the first time I got a response.

18 Q. Well, that's the only record we have is
19 this February 21st, 2007 as the first inmate
20 grievance that you filed. Did you file any other
21 grievances besides that?

22 A. Yes, sir.

23 Q. And were they in the form of request
24 forms or grievances?

25 A. Grievance.

1 you did the February 21st after the ones on the
2 15th?

3 A. Correct.

4 Q. Okay. All right. So February 21st.
5 Then I'm going to turn to the next one. This is
6 the First Step Response Form --

7 A. Yes, sir.

8 Q. -- which was responded to by Captain
9 Rogers, dated February 23rd, 2007. That's two
10 days after your grievance form of the 21st,
11 correct?

12 A. Correct.

13 Q. And in his response, he indicates that
14 you will need to contact your attorney or CID
15 about your case; is that correct?

16 A. Uh-huh. That's correct.

17 Q. Okay. And did you do so?

18 A. I started sending requests and more --
19 you can't file a grievance. I think I did send a
20 grievance to CID, too.

21 Q. Can you file grievances to the CID
22 through the jail?

23 A. I don't think you can, but I think I
24 sent them a grievance.

25 Q. So you tried to contact CID through the

1 jail?

2 A. Yeah. Because every time I tried to get
3 in contact with CID -- well, when he sent me back
4 this and told me that I need to contact CID, when
5 I'd write CID, I'm not getting a response back
6 from none of my requests. So at that time I filed
7 a grievance, too, and I didn't get a response back
8 on the grievance.

9 Q. So you filed another grievance?

10 A. Yes, sir.

11 Q. Okay. But, again, did you contact CID
12 outside of the detention center?

13 A. I have no way of doing that.

14 Q. You have no way to write them a letter?

15 A. No, sir.

16 Q. You're not allowed to write letters?

17 A. No. I didn't -- I mean, I can write
18 letters, but I did not contact them through that.
19 I wrote a letter to George Payne's secretary.

20 Q. When did you do that?

21 A. I did that sometime -- I did that
22 sometime in this year, in this month while I was
23 over there on B-D.

24 Q. Okay. So that would have been
25 February 2007?

1 A. Yes, sir.

2 Q. And that was a letter to George Payne?

3 A. Yes, sir.

4 Q. And how did you deliver that letter to
5 him?

6 A. I mailed that out.

7 Q. All right. In this First Step Response
8 Form it also asks for you to contact your
9 attorney. Would that have been Kay Wilkerson?

10 A. I called Ms. Kay Wilkerson.

11 Q. You phoned her?

12 A. Yes, sir.

13 Q. When did you do that?

14 A. Well, after I got this grievance.

15 Q. And did you speak with her?

16 A. Yes, sir. And she told me there's
17 nothing that she can do until I get indicted and
18 that she was my attorney just for the preliminary
19 hearing and that when I get indicted that I will
20 be given an attorney.

21 Q. So you contacted her by phone when?

22 A. I contacted her a lot.

23 Q. Okay. When did you first contact her?

24 A. In February.

25 Q. And then after that?

1 Q. But you don't have any personal
2 knowledge of it one way or another?

3 A. Of neither, of her concealing it or not.

4 Q. Okay. I'll let Mr. Brendel go through
5 Mr. Gaston's issues here in a moment.

6 Steve Campbell is another person you've
7 sued. It says that Steve Campbell became a major
8 player because he refused to respond to numerous
9 requests I submitted. Did you submit anything to
10 Officer Campbell directly?

11 A. Officer Campbell, at that time when I
12 found out who he really was, is the captain of
13 CID. And I've sent numerous requests and
14 grievance with his name on it and still -- also to
15 Ms. Carol Pendergast and received no responses.

16 Q. Okay. I need you to, the best you can,
17 identify when and where those grievances were sent
18 to Officer Campbell.

19 A. This would have been around February.

20 Q. Of 2007?

21 A. Yes, sir.

22 Q. That would be the first time you
23 attempted to contact Steve Campbell?

24 A. This would be the first time I sent a
25 grievance to Mr. Campbell. I sent requests to

1 A. Resulted in deliberate indifference --

2 Q. Yes.

3 A. -- depriving the plaintiff's
4 Constitutional rights.

5 Q. I mean, are you really claiming here
6 that you're holding Payne responsible for the
7 actions of his employees?

8 A. For the action of the employees not
9 following policies and procedures that's set up by
10 him.

11 Q. But Defendant Payne, I mean, Sheriff
12 Payne really was not involved in this personally
13 at all.

14 A. Well, I contacted him and informed him
15 what was going on. I received no response back
16 from him. He would be -- I feel he would be more
17 responsible towards Cabana because he hired Donald
18 Cabana.

19 Q. So you're holding Sheriff Payne
20 responsible for the actions or inactions of Warden
21 Cabana?

22 A. Correct.

23 Q. And then how is Warden Cabana personally
24 involved, just by not responding to your requests?

25 A. Well, not only that, not responding to

1 requests or grievance or actually doing something
2 about the situation.

3 Q. Okay. So his failure to act?

4 A. Correct. I guess just as I stated here,
5 failure to oversee the people who caused the
6 wrong, such as hiring unqualified people or
7 failing to adequately train the staff or create a
8 policy or custom that allowed the wrong.

9 Q. All right. Okay. So what's stated
10 there?

11 A. Sir?

12 Q. What's stated there is what you're
13 claiming?

14 A. Yes, sir.

15 Q. All right. As to Defendant Rogers,
16 Captain Rogers -- this is on Page, I guess, 6 --
17 you're claiming that he failed to do anything to
18 stop or fix the wrong?

19 A. Yes, sir. And not only that he's -- and
20 that didn't come to my knowledge till way later
21 that also he's the captain of security, and he
22 answered my grievance. And as the captain of
23 security, he should have made sure everything
24 was -- should have been done much better than what
25 it was.

1 Q. So for his job duties?

2 A. Yes, sir.

3 Q. Okay. And then Nathan Ellsberry, you
4 said, failed to do anything to stop or fix the
5 wrong.

6 A. And he was present the time that I was
7 in the -- talking to Sergeant Leonard. He was
8 there. He was aware of what was going on, and he
9 wouldn't do nothing.

10 Q. Okay. And then you add -- I think the
11 last one is Lege.

12 A. Uh-huh.

13 Q. Knew of the wrongs. How so? It says
14 Lege knew of the wrong but did nothing to remedy
15 the wrong.

16 A. She's a sergeant. And then that's the
17 same sergeant that came and talked to me while I
18 was in B-D, saying that I'm being charged with
19 contraband. I've never received an RVR for this
20 contraband. I never seen an RVR for the sexual
21 battery. Captain Rogers said that a rule
22 violation you really don't -- you don't want an
23 RVR, but policies and procedures that are set up
24 stated that I'm entitled to an RVR, that
25 Officer -- that Sheriff George Payne authorized.

1 problem. I've been in that jail since December
2 the 12th, 2004. I never had an RVR. I never
3 caused any problems to nobody. Here I am in a
4 location where -- and I'm talking about it
5 started -- it was -- before it actually got out of
6 hand, I don't know if you know about it, but all
7 the guys known as our section, in that area, in
8 B-A was jumped by these same four individuals.
9 They jumped all the white guys just because they
10 was white, every last one of them, in November
11 because they were white.

12 Q. This is November 2007?

13 A. Yes, sir.

14 Q. This is after your incident?

15 A. This is after my incident. It made the
16 news -- I mean, well, the newspaper. But they
17 were only jumped because they were white.

18 Q. Okay. But who are you holding
19 responsible for --

20 A. I'm holding Dr. Cabana responsible.

21 Q. Cabana, okay. And that's for what
22 reason?

23 A. I'm holding Sheriff George Payne
24 responsible. I'm holding Harrison County Board of
25 Supervisors responsible, whoever is responsible

1 for the security.

2 Q. For security reasons?

3 A. Because the doors don't properly lock.
4 The intercom doesn't work at all, officers not
5 checking on inmates every -- I mean, that's a high
6 risk area. It should be you should check on an
7 individual every 30 minutes. I can't tell a
8 person how to run the zone, but only to prevent
9 one of the officers being killed or an inmate
10 being killed.

11 Q. Are you holding Officer Evan Hubbard
12 responsible?

13 A. No. Because Officer Evan Hubbard,
14 that's the kind of officer they need. He actually
15 did something.

16 Q. I'm just trying to find out who your
17 claims are against.

18 A. No, sir. I'm not holding him
19 responsible.

20 Q. And then in your discovery that you
21 answered to Harrison County, let's see here, you
22 make a claim that William Martin was negligent.

23 A. I wrote Mr. Martin. I wrote him a
24 letter explaining to him everything that was going
25 on. I wrote him a letter responding -- telling

1 A. So I can ask Lieutenant Falk am I under
2 a court order to have a deposition without an
3 attorney.

4 MR. BRENDEL:

5 Let's go off the record for a moment,
6 please.

7 (Off the record.)

8 MR. BRENDEL:

9 Q. Now, at the time that you allege all
10 these violations of your constitutional rights,
11 you would have still been incarcerated in Harrison
12 County during that time anyway, right?

13 A. Yes, sir.

14 Q. Okay. In fact, as we sit here today on
15 March 27th, 2008, are you still serving time in
16 Harrison County?

17 A. No, sir.

18 Q. Why are you here right now?

19 A. Pay restitution.

20 Q. But that's related to a crime that was
21 committed in Harrison County?

22 A. Correct. But your question asked me
23 would I still be here, locked up for 434 days, two
24 years later.

25 Q. No, that wasn't my question.